

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

JUL 15 4 27 PM '93

MM Docket No. 93-186

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8258
Table of Allotments,
FM Broadcast Stations.
(Half Way and Ozark,
Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 18, 1993;

Released: July 13, 1993

Comment Date: September 3, 1993

Reply Comment Date: September 20, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed jointly by Ozark Mountain Broadcasting, Inc. ("OMB"), permittee of Station KZPF(FM), Ozark, Missouri, and KYOO Broadcasting Company ("KBC") (jointly referred to as "petitioners"), permittee of Station KYOO-FM, Half Way, Missouri. OMB requests substitution of Channel 225C2 for Channel 225A at Ozark, Missouri, and modification of the construction permit for Station KZPF(FM) accordingly. KBC proposed the substitution of Channel 256A for Channel 226A at Half Way, Missouri, and modification of the construction permit for Station KYOO-FM to specify operation on Channel 256A.

2. In support of the proposal, petitioners state that the substitution of channels at Half Way and Ozark will permit improved service by both stations to their respective communities. Petitioners also state that substitution of Channel 256A for Channel 226A at Half Way is required to effectuate the upgrade at Ozark. In addition, petitioners state that OMB has agreed to reimburse KBC for its reasonable costs associated with changing channels at Half Way. There is no need to issue an *Order To Show Cause* in this proceeding, since KBC has consented to change its site and channel at Half Way.

3. We believe the public interest will be served by the proposed substitutions because they will result in the provision of expanded service at Ozark. Channel 225C2 can be allotted to Ozark, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules at the site specified by OMB.¹ The allotment at Ozark currently conflicts with the licensed site for Station

KFAY-FM, Channel 225A, Huntsville, Arkansas, and the construction permit site for Station KXBR, Channel 228A, Greenfield, Missouri. The authorization for each channel was modified in previous proceedings, and the substituted channels are fully spaced to OMB's proposal.² Therefore, issuance of a license for Channel 225C2 at Ozark is contingent on the licensing of Station KFAY-FM, Huntsville, on Channel 258A and Station KXBR, Greenfield, on Channel 299A. Channel 256A can be allotted to Half Way, Missouri, in compliance with the Commission's spacing requirements at KBC's specified site.³ Therefore, we shall propose to modify the construction permit for Station KYOO-FM at Half Way, Missouri, to specify operation on Channel 256A.

4. We shall propose to modify the license of Station KZPF(FM), Ozark, Missouri, to specify operation on Channel 225C2, as requested. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept other expressions of interest in the channel.

5. Accordingly, for the reasons stated above, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Half Way, Missouri	226A	256A
Ozark, Missouri	225A	225C2

6. IT IS FURTHER ORDERED, That the Secretary of the Commission Shall Send By Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making* to the following:

Demaree Media, Inc. Station KFAY-FM P.O. Box 878 Fayetteville, Arkansas 72712	Henden-McChristian Communications Station KXBR Rt. 5, Hwy 72 East Gravette, Arkansas 72736
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7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **September 3, 1993**, and reply comments on or before **September 20, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

William J. Pennington, III
Post Office Box 2506
Pawleys Island, South Carolina 29585

¹ The coordinates for Channel 225C2 at Ozark are 36-58-45 and 93-26-38.

² The *Report and Order* in MM Docket 92-49, modified the license for Station KFAY-FM, Huntsville, to specify operation on Channel 258A and modified the construction permit for

Station KXBR, Greenfield, to specify operation on Channel 299A. See 8 FCC Rcd 734 (1993).

³ The coordinates for Channel 256A at Half Way are 37-44-35 and 93-15-00.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.